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House Bill 6482, An Act Authorizing the Department of Transportation to Conduct a Pilot Project Based on Design-Build and Other Alternative Contracting Methods

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Program Review and Investigations Committee

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CCIA Position: Opposed

Connecticut Construction Industries Association, Inc. (CCIA) represents many sectors of the commercial construction industry in the state. Formed over 40 years ago, CCIA is an organization of associations, where those segments of the commercial construction industry work together to advance and promote their shared interests. CCIA is comprised of about 350 members, including contractors, subcontractors, suppliers and affiliated organizations representing many sectors of the construction industry. CCIA members have a long history of providing quality work for the public benefit.

CCIA is **opposed** to House Bill 6482, An Act Authorizing the Department of Transportation to Conduct a Pilot Project Based on Design-Build and Other Alternative Contracting Methods, and respectfully requests that the committee not act on the bill.

House Bill 6482 would authorize the state Department of Transportation (ConnDOT) to conduct, on a pilot basis, projects based on design-build and other alternative contracting methods. The bill arose out of the interim Results-Based Accountability Study 2010 on ConnDOT's project delivery process performed by the committee and would implement one of its recommendations. CCIA would like to commend the committee and its fine staff for their diligent work on the study. Committee staff were very conscientious and prepared a comprehensive review and analysis for the committee's consideration. CCIA appreciates the opportunity it had to meet with the staff and participate in the study as a stakeholder concerning the issues under review.

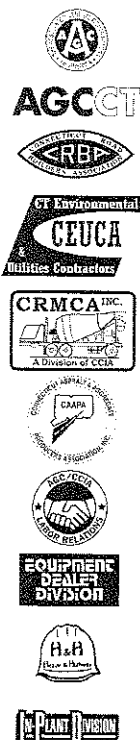
CCIA is opposed to the design-build project delivery method and authorizing it on a pilot basis for several reasons.

For design-build contract delivery to work, three elements are necessary:

- the right owner,
- the right application, and
- the right administration.

None of these are presently in place for transportation projects in Connecticut.

The design-build form of project delivery is, according to the Design-Build Institute of America, a system of contracting whereby one entity performs both architectural/engineering and construction under one single contract. Under this



arrangement, the design-builder warrants to the contracting agency that it will produce design documents that are complete and free from error (design-builder takes the risk). The selection process under design-build contracting can be in the form of a negotiated process involving one or more contracts, or a competitive process based on some combination of price, duration, and proposer qualifications. Portions of the overall design or construction work can be performed by the design-build entity or subcontracted out to other companies that may or may not be part of the design-build team.

Connecticut does not have the right owner.

In general, to implement design-build, an agency needs to commit staff resources and develop procedures and practices to accommodate the special requirements of this contract delivery method. ConnDOT does not have the staffing or resources needed to implement design-build, even on a pilot basis, nor does it have in place the necessary practices or procedures to administer such a process.

States that have used design-build have indicated that there has to be a culture change to allow innovation and creativity to support the process. Additionally, proper training is essential for a department of transportation to effectively use design-build. ConnDOT's culture is currently very compliance and audit-based, which is contrary to a culture that rewards innovation. Other state departments of transportation that have effectively employed design-build have a dedicated in-house design-build project manager or a design-build team. Connecticut's Department of Transportation does not have those personnel or the expertise on staff or the resources to put them in place.

Design-build would allow discretion in the contractor selection process, which can easily compromise the competitive bidding for public work. In the traditional design-bid-build delivery method, contractors compete and contracts are awarded on a strictly lowest competitive bid basis. Allowing discretion in the selection of the design-build competition would give ConnDOT officials the ability to eliminate and select a contractor on virtually any basis. ConnDOT has eliminated contractors from the bidding process on an arbitrary basis over the past year, even under the design-bid-build process. This causes concern in the construction industry about the Department's ability to select contractors using the design-build methods. Allowing ConnDOT to use the design-build delivery method could easily compromise the integrity of the contractor selection and bidding process.

Connecticut does not have the right application.

It is well accepted that the design-build delivery method does not lend itself for use on renovation projects or reconstruction projects. The delivery process might work for new construction projects or replacement projects. The project selection and application have to be carefully analyzed, especially considering the administration challenges outlined below.

Connecticut does not have the right administration.

The risks associated with every construction project have to be determined and assigned to the party who has control of the risk for design-build to work effectively. ConnDOT cannot shift the risk to contractors for things such as environmental permits and utility relocations that the contractor has no control over. The Connecticut Department of Environmental Protection will only issue certain permits to ConnDOT and will not issue those permits to contractors. Further, DEP will not issue permits without plans. The committee's report identified this shortcoming. It noted:

The practice for transportation projects is to have project design be roughly 90 percent complete before DOT submits permit applications to DEP for its review. DOT maintains if DEP requires changes to a project's design for environmental purposes, time and expense are added to the design process because projects are almost fully designed by the time environmental permit applications are submitted to DEP. DEP's position is that it is difficult to determine if projects meet permit requirements without project design near full completion. *See Committee Findings and Recommendations*, at page 29.

The environmental and right-of-way permitting process with both ConnDOT and DEP will not allow timely permits for the design-build delivery method to work in Connecticut. It is difficult for ConnDOT to obtain permits at 80% completion of plans; it would be virtually impossible to get permits at 30% completion of plans, and during the expedited design-build process.

Additionally, surety companies are reluctant to underwrite the risk of contractors taking on responsibilities normally associated with project owners and designers. Environmental and hazardous materials as well as the financial risk cause the most concern. System scheduling with Amtrak and Metro-North Railroad present similar challenges. All risks must be identified and assigned to the proper party.

Several significant issues must be resolved before ConnDOT can begin a pilot program using the design-build delivery method. There is an investment in training, and a culture shift that needs to be made at the Department. The proper use and projects must be identified. The legislature needs to determine if it is willing to remove the safeguards in the lowest competitive bid process and allow ConnDOT officials open discretion in the contractor selection process. The administrative challenges need to be resolved and DEP would have to change its permit process. Additionally, the risks of the project must be identified and assigned in the proper manner. The last thing ConnDOT needs right now is another contracting mishap.

For additional information, please contact Don Shubert, CCIA President, or Matthew Hallisey, CCIA director of government relations and legislative counsel, at 860-529-6855.

